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SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Written statement submitted by Human Rights Advocates, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 1999]

GE.99-11414 (E)

Violations of migrant workers' rights

1. As migrant workers cross borders worldwide, they become vulnerable to abuses of their human rights including the fundamental right to life. Human Rights Advocates (HRA) and groups have submitted numerous reports describing violations of migrant workers' rights for many years, but little has been accomplished towards redressing those violations. Meanwhile, the number of migrant workers who lose their lives as they try to cross borders continues to increase. The purpose of this statement is to update previous submissions by HRA to the Commission in an effort to draw increased attention to the situation of migrant workers 1/ and to offer concrete suggestions in an effort to promote and protect the rights of migrants while the 1990 Convention remains ineffective. Although violations around the world will be addressed, in view of the fact that HRA has most access to information in the United States, this statement will focus on migrant worker abuses as they occur along the 2,000 mile United States-Mexican border.

2. Migrants crossing borders are subjected to a number of life-threatening factors, including border patrol agents, smugglers and harsh environmental conditions.

3. The United States Border Patrol, the enforcement arm of the Immigration and Naturalization Service, is permitted to use deadly force in self-defence or in situations calling for the defence of another. Although these guidelines fall within internationally accepted norms aimed at protecting borders, they are often ignored. 2/

4. After a three-year hiatus in fatal shootings along the California-Mexican border, two undocumented individuals were shot and killed by border patrol agents and two more were wounded this past year. The agents involved in these incidents have been placed on paid administrative leave pending further investigation by the Federal Bureau of Investigation (FBI). 3/ What will result from the investigation is yet unknown, but it is anticipated that the incidents will slowly fade from memory and the agents will be back at work in the near future. 4/

5. The perpetration of human rights violations by smugglers is prevalent as well. A smuggler will often charge an undocumented individual thousands of dollars to guide him individually or with a group across the border. Once across the border, it is not unusual for the smuggler to abandon the migrants in the desert without water or hold them captive in so-called "safe houses" until they work off their transportation fees. In an effort to conceal illegal entry, smugglers have also been known to shove dozens of people into railroad boxcars that become virtual ovens when temperatures rise above 100 degrees Fahrenheit. 5/

6. With the recent increase in United States Border Patrol agents, migrants are being forced to take desperate measures in seeking out alternative and thus more dangerous routes of entry. Many migrants fail to make it across the border and instead drown in rough or deep waters or die of heat exhaustion or dehydration in their attempts. Because these "environmental deaths" occur

only one or two at a time, they are rarely noticed. Collectively, however, these deaths have become so frequent in recent years that these individuals have come to be known as "the disappeared". 6/

7. To make matters worse, once the bodies of migrants are found, the Government buries the individual without any type of ceremony or notification to family members. 7/ Many of the migrants' bodies are never registered with United States vital records. Because of the informal procedures in handling the bodies of migrants, the actual number of migrants who die each year is uncertain. 8/ In addition, owing to the costs involved in conducting autopsies, an accurate assessment of the cause of death in many cases is impossible. 9/

8. Several factors have resulted in an increase of human rights violations against migrants in the United States. Most significantly, in an attempt to decrease the number of undocumented individuals in the United States, the Government has passed legislation calling for a significant increase in Border Patrol agents and the erection of fences along the United States-Mexican border. 10/ The Mexican Consulate has reported that in the four years since the implementation of Operation Gatekeeper, 345 migrants have died while attempting to cross the California-Mexico border. Deaths reported in 1998 are up from those reported in 1997. In 1997, 37 migrants died in San Diego county; in 1998, 38 died. In 1997, 52 migrants died in Imperial county; in 1998, 98 died. 11/ (The majority of persons crossing into California from Mexico enter through these two adjoining counties.)

9. Elsewhere, other migrants also suffer in their attempts to cross borders. Mexico has steadily increased the strength of its military forces along its border with Guatemala in order to reduce the number of migrants coming from Central America on their way to the United States. 12/ As a result, reported human rights violations have increased. 13/ Reports indicate that immigration officials have robbed, beaten and even killed individuals trying to make their way into Mexico for economic and social reasons. 14/

10. In South Africa, steps are being implemented to stop the influx of migrants from neighbouring countries who come to South Africa in an effort to better their lives. Once they have arrived in South Africa, migrants must deal with strong xenophobic sentiment. Attacks on foreign street vendors by native street vendors have been reported. 15/

11. Amnesty International reports that migrants held in Japanese jails and immigration detention facilities risk being beaten, humiliated and/or sexually assaulted by immigration officials and prison guards. The report cites 18 cases that suggest a pattern of cruel and degrading treatment of foreign detainees. 16/

12. Saudi Arabia, a major importer of foreign labour, gives employers tremendous power over their foreign workers by placing significant restrictions on workers' freedom of movement while offering almost no avenues for redress of abuses. Migrant workers are forced to accept low wages or are not paid at all. In many cases, employers confiscate workers' passports, which gives rise to conditions of forced labour. Women workers are especially vulnerable to forced labour, as well as physical and sexual abuse. 17/

14. It is critical for the protection of migrant workers' rights that the working group of intergovernmental experts on the human rights of migrants be able to take concrete steps to address reported human rights violations while the 1990 Convention remains ineffective. In an effort to address the egregious human rights violations occurring at borders and in the workplace, as described in this statement, Human Rignts Advocates respectfully suggests that the Working Group make the following recommendations to all countries:

(a) Establish grievance procedures to address border patrol violations against migrant workers and their families which include the following components:

A worldwide code of conduct regulating border patrol agents' conduct in confrontational and other related situations;

An inquiry procedure for investigative action once a complaint is lodged by a victim to decide whether criminal and/or civil action is warranted;

If determined to be warranted, the availability of criminal liability and civil liability that would extend beyond reprimand or dismissal of a border agent for human rights violations; and

Joint effort with consular offices along respective borders to aid migrants in processing claims of abuse.

(b) Establish a programme to offer protection to migrant workers who file complaints against traffickers, including protection from criminal liability and expulsion;

(c) Implement programmes to better identify migrant workers who die as a result of exposure to the environment, including the systematic recording of migrant deaths through a centralized agency, volunteer programmes for morticians, proper autopsies, and the use of photography and/or forensic evidence if immediate identification of the deceased is not possible;

(d) Ensure that worker protection under domestic labour law applies to all categories of employment in which migrant workers are found, including domestic service;

(e) Ensure that foreign consular officials are fully knowledgeable about the rights and difficulties of migrant workers and have procedures in place to help their own nationals in need, regardless of their status;

(f) Adopt a policy to protect all workers, including undocumented workers, who wish to bring charges against abusive employers.

15. In addition to encouraging States to take action on the domestic front, Human Rights Advocates strongly urges the Commission to take immediate action towards implementing a monitoring and investigative mechanism which would address allegations of abuses of the human rights of migrant workers. Owing to a strong lack of political will, there is currently no effective international effort aimed at addressing specific violations of migrant workers rights, despite their very serious nature. It is widely recognized

that all individuals, wherever they may live, are entitled to the fundamental rights articulated in the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. Furthermore, the right to life is the most precious and fundamental of all human rights.

16. Accordingly, in view of the lack of adequate protection, it is incumbent on the Commission on Human Rights to address the thousands of violations of the basic human rights of migrants that occur every year. To that end, Human Rights Advocates applaud the Working Group's expressed interest in designating a Special Rapporteur or independent expert to assist in monitoring and strengthening the existing system. We believe that a Special Rapporteur would be extremely helpful in addressing specific human rights violations if given the latitude needed to institute the appropriate redress. We urge the Commission to authorize either the Working Group or the Special Rapporteur to take the following additional steps which would assist it in developing the authority to investigate alleged violations:

(a) Examine the procedures developed by the Working Group on Enforced or Involuntary Disappearances, which was given investigative authority in an effort to eliminate forced disappearances; 18/

(b) Examine the procedures of the Special Rapporteur on extrajudicial, summary or arbitrary executions, who developed a system of reviewing individual cases, with the goal of providing a remedy for specific violations. 19/

Notes

1/ Written statements submitted by Human Rights Advocates: E/CN.4/AC.46/1998/3 Adds 3 and 5, and E/CN.4/1998/NGO/43.

2/ America's Watch, Brutality Unchecked: Human Rights Abuses Along the Border with Mexico, 1, 4 (1992).

3/ Ken Ellingwood, "Agents shoot man in second killing", Los Angeles Times, 29 September 1998.

4/ Idem.

5/ William Claiborne, Washington Post, 25 June 1998.

6/ Sam Howe Verhovek, "Silent deaths rise as migrants cross Mexico border", 24 August 1998, http://www.latinolink.com.

7/ University of Houston news release, "University of Houston finds hundreds of unknown migrants die each year", 14 March 1996, http://www.ua.uh.edu.

8/ Idem.

9/ Idem.

10/ See note 6.

11/ National Network for Immigrant and Refugee Rights, "More border deaths", 20 November 1998, http://www.nnirr.org.

12/ Hayes Ferguson, "Mexico tightening southern border", Rocky Mountain News, 3 March 1996.

13/ Idem.

14/ Idem.

15/ Mary Braid, "South Africans discover xenophobia as foreigners flood in looking for work", The Independent, London, 23 August 1997.

16/ "Asia - Foreigners in Japan", Migration News, vol. 4, No. 12 (December 1997), http://www.migration.ucdavis.edu.

17/ Human Rights Watch, "World report 1998 - Saudi Arabia", 4 February 1999, http://www.hrw.org.

18/ David Weissbrodt, "The three themes - Special Rapporteurs of the UN Commission on Human Rights", 80 AM.J.INT'L L. 685, 685-95 (1986).

19/ Frank Newman and David Weissbrodt, International Human Rights: Law, Policy and Process, (2d. ed. 1996).